

EX PARTE OR LATE FILED

THE LAW OFFICES OF  
MICHAEL R. GARDNER, P.C.

ATTORNEYS AT LAW  
1150 CONNECTICUT AVENUE, N.W.  
SUITE 710  
WASHINGTON, D.C. 20036  
(202) 785-2828  
FAX (202) 785-1504

May 5, 1995

By Hand

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Ex Parte Presentation  
CC Docket No. 92-297, ET Docket No. 94-124

Dear Mr. Caton:

In response to an ex parte filing by Teledesic Corporation ("Teledesic") in the above-referenced proceedings dated April 14, 1995 ("Teledesic April 14 ex parte filing"), CellularVision wishes to correct several mischaracterizations that continue to be relied upon by Teledesic, Hughes Communications Galaxy, Inc. ("Hughes") and other Fixed Satellite Service ("FSS") proponents in advocating that LMDS be moved to the 40 GHz band. CellularVision regrets that the important public policy process of licensing LMDS in the 28 GHz band has become cluttered by repeated FSS-generated hyperbole about the viability of LMDS at 40 GHz. However, CellularVision must briefly correct the record in regard to the most glaring and recurring misstatements contained in Teledesic's April 14 filing.

- The reputed stature of Dudley Labs ("Dudley") in the domestic and global LMDS marketplaces is bogus. Rather than being the leading supplier of LMDS equipment, Dudley, according to a Dun & Bradstreet Report dated April 3, 1995 (copy attached as Exhibit 1), consists of Henry Dudley and one employee, and operates from the residence of Mr. Dudley. Moreover, according to the Dun & Bradstreet Report, the maximum value of LMDS equipment provided under contract by Dudley is \$9,350. Clearly, Dudley is not, as Teledesic claims, "the largest manufacturer of deployed 28 GHz LMDS equipment," (Teledesic April 14 ex parte filing, page 10) nor is it true that Dudley, as it claims, has "provided most of the commercial equipment in use today." Dudley Labs' Reply Comments in ET Docket No. 94-124, March 1, 1995. While CellularVision does not wish to denigrate Mr. Dudley, his statements and those of the FSS interests about the purported viability of LMDS at 40 GHz must be considered in the

No. of Copies rec'd  
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Letter to Mr. Caton  
May 5, 1995  
Page 2


proper context, namely Dudley's insignificant and de minimis role in the LMDS industry.

- The December 2, 1993 letter from Lionel S. Johns of OSTP cited by Teledesic (Teledesic April 14 ex parte filing, page 2) does not represent the official position of the White House. As explained in a letter from then-White House Counsel Bernard Nussbaum dated February 1, 1994 (copy attached as Exhibit 2), the OSTP "is an agency, separate from the White House Office . . . and Mr. Johns -- the signatory -- holds no White House position." Moreover, it would be patently inappropriate for the White House to take a position on this matter since to do so would put the cherished and Congressionally mandated independence of the FCC at risk. The White House traditionally and appropriately articulates any policy views to the FCC through the Commerce Department's NTIA. Thus, Teledesic's attempt to cite the OSTP as reflective of a White House position in favor of FSS over LMDS in the 28 GHz band is yet another serious misstatement.
- Teledesic's public statement ridiculing Bellcore's latest study as partisan and "nothing more than a propaganda exercise . . . paid for by CellularVision" (Teledesic April 14 ex parte filing, page 6) is false. The Bellcore study was financed by a diverse group of U.S. communications leaders, including Motorola, Texas Instruments, Bell Atlantic and CellularVision. The Bellcore study was done following the formal recommendation of the FCC's Negotiated Rulemaking Committee for "industry to further explore mitigation techniques and statistical modeling." Report of the LMDS/FSS 28 GHz Band Negotiated Rulemaking Committee, Executive Summary, page iii, September 23, 1994. Accordingly, Bellcore's study is the result of the industry's continuing efforts to develop a co-frequency sharing approach to allow LMDS and FSS to share the idle 28 GHz spectrum — spectrum that could generate billions in federal deficit reducing dollars if properly licensed.
- The statements of satellite proponents about the technical and economic viability of LMDS at 40 GHz cited by Teledesic are self-serving and incorrect. Hughes, whose DBS service is expected to face stiff competition from LMDS, is not credible when suggesting that LMDS at 40 GHz is a "win" for LMDS. To the contrary, a detailed review of the Reply Comments filed by the U.K.'s Radiocommunications Agency in ET Docket No. 94-124 confirms that LMDS would not be viable in the 40 GHz band in the United States. See "The U.K. Radiocommunications Agency and CellularVision Concur: LMDS is Not Viable in the Frequency Bands Above 40 GHz," dated April 18, 1995, filed by CellularVision in CC Docket No. 92-297 and ET Docket No. 94-124.

Letter to Mr. Caton  
May 5, 1995  
Page 3

In the remaining weeks before the Commission finally takes up the long-stalled 28 GHz LMDS Rulemaking, CellularVision urges the Commission to focus appropriately on the nationwide licensing of LMDS in the 28 GHz band — the only appropriate spectrum for the robust development of LMDS as a consumer friendly, competitive alternative to cable, telephony and other services.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael R. Gardner". The signature is fluid and cursive, with the first name "Michael" being the most prominent.

Michael R. Gardner  
Counsel for CellularVision

Attachments

cc Karen Brinkmann  
Lauren J. Belvin  
Rudolfo M. Baca  
Lisa B. Smith  
Jane Mago  
Jill Lockett  
David R. Siddall  
Mary P. McManus  
Robert M. Pepper  
Donald H. Gips  
Scott Blake Harris  
Thomas Tycz  
Michael J. Marcus  
Robert James  
Susan E. Magnotti

## Exhibit 1

# Business Information Report<sup>TM</sup>

Page 1 of 4

 April 3, 1995  
 3:01 pm

## BUSINESS SUMMARY

|                            |                          |                |                 |
|----------------------------|--------------------------|----------------|-----------------|
| <b>DUDLEY LABS</b>         | <b>DUNS: 82-485-0911</b> | <b>RATING</b>  | <b>--</b>       |
| <b>1508 WELLINGTON AVE</b> | <b>MFG ELECTRONIC</b>    |                | <b>FORMERLY</b> |
| <b>TOMS RIVER NJ 08757</b> | <b>EQUIPMENT</b>         | <b>STARTED</b> | <b>ERN</b>      |
| <b>TEL: 908 240-6895</b>   | <b>SIC NO.</b>           | <b>EMPLOYS</b> | <b>1994</b>     |
|                            | <b>3699</b>              | <b>HISTORY</b> | <b>2</b>        |
|                            |                          |                | <b>CLEAR</b>    |
| <b>HENRY DUDLEY, OWNER</b> |                          |                |                 |
| <b>RATING CHANGE</b>       |                          |                |                 |

## CUSTOMER SERVICE

If you need any additional information, would like a credit recommendation, or have any questions, please call our Customer Service Center at (800) 234-3867 from anywhere within the U.S. From outside the U.S., please call your local D&B office.

## SUMMARY ANALYSIS

The Summary Analysis section reflects information in D&B's file as of April 3, 1995.

### RATING SUMMARY . . . .

The absence of a Rating (--) indicates that the information available to D&B does not permit us to assign a Rating to this business. In this case, no Rating was assigned because D&B lacks a current financial statement for this company.

Below is an overview of the company's D&B Rating(s) since 01/18/94:

| <b>RATING</b> | <b>DATE APPLIED</b> |
|---------------|---------------------|
| -----         | -----               |
| <b>--</b>     | <b>11/18/94</b>     |
| <b>ERN</b>    | <b>01/18/94</b>     |

April 3, 1995  
3:01 pm**PAYMENT SUMMARY**

The Payment Summary section reflects payment information in D&B's file as of the date of this report.

The PAYDEX for this company is 80.

This PAYDEX score indicates that payments to suppliers are generally within terms, weighted by dollar amounts. When dollar amounts are not considered, approximately 100% of the company's payments are within terms.

Below is an overview of the company's dollar-weighted payments, segmented by its suppliers' primary industries:

|                           | TOTAL<br>RCV'D | TOTAL<br>DOLLAR<br>AMOUNTS | LARGEST<br>HIGH<br>CREDIT | %<br>W/IN<br>TERMS | DAYS SLOW |       |       |     |
|---------------------------|----------------|----------------------------|---------------------------|--------------------|-----------|-------|-------|-----|
|                           |                |                            |                           |                    | <31       | 31-60 | 61-90 | 91+ |
|                           | #              | \$                         | \$                        | %                  | %         | %     | %     | %   |
| Total in D&B's file       | 9              | 9,350                      | 2,500                     |                    |           |       |       |     |
| Payment By Industry:      |                |                            |                           |                    |           |       |       |     |
| 1 Whol electronic parts   | 3              | 4,500                      | 2,500                     | 100                | -         | -     | -     | -   |
| 2 Air courier service     | 2              | 1,250                      | 1,000                     | 100                | -         | -     | -     | -   |
| 3 Whol electrical equip   | 1              | 1,000                      | 1,000                     | 100                | -         | -     | -     | -   |
| Other Payment Categories: |                |                            |                           |                    |           |       |       |     |
| Cash experiences          | 2              | 100                        | 100                       |                    |           |       |       |     |
| Payment record unknown    | 1              | 2,500                      | 2,500                     |                    |           |       |       |     |
| Unfavorable comments      | 0              | 0                          | 0                         |                    |           |       |       |     |
| Placed for collection     |                |                            |                           |                    |           |       |       |     |
| with D&B                  | 0              | 0                          |                           |                    |           |       |       |     |
| other                     | 0              | N/A                        |                           |                    |           |       |       |     |

The highest "Now Owe" on file is \$1,000

The highest "Past Due" on file is \$ 0

D&B receives over 220 million payment experiences each year. We enter these new and updated experiences into D&B Reports as this information is received.

April 3, 1995  
3:01 pm**PAYMENTS**

DATE RANGE: 10/94 03/95 HI CREDIT: 2500 AVG HI CREDIT: 1154  
 ANTIC/DISC PROMPT SLOW TO 30 SLOW 31 TO 60 SLOW 61+ TOTAL  
 ALL SOURCES: 0.0 6.0 0.0 0.0 0.0 6  
 PAST 3 MOS: 0.0 6.0 0.0 0.0 0.0 6  
 HIGHEST CR: 0 2500 0 0 0  
 COD, CIA, COS, CASH OUR REQUEST: 2 CASH OWN OPTION: 0  
 PAY MANNER NOT SPECIFIED: 1 PLACED FOR COLLECTION: 0  
 SIC NO(S): 35 99

**PAYMENTS**

Antic - Anticipated (Payments received prior to date of invoice)  
 Disc - Discounted (Payments received within trade discount period)  
 Ppt - Prompt (Payments received within terms granted)

| REPORTED | PAYING<br>RECORD | HIGH<br>CREDIT | NOW<br>OWES | PAST<br>DUE | SELLING<br>TERMS | LAST SALE<br>WITHIN |
|----------|------------------|----------------|-------------|-------------|------------------|---------------------|
| 03/95    | Ppt              | 2500           | 1000        | -0-         | N30              | 1 Mo                |
|          | Ppt              | 1000           | -0-         | -0-         |                  | 2-3 Mos             |
| 02/95    | Ppt              | 1000           | -0-         | -0-         | N30              | 6-12 Mos            |
|          | Ppt              | 1000           | -0-         | -0-         | N30              | 2-3 Mos             |
|          | Ppt              | 1000           | 100         | -0-         |                  | 1 Mo                |
|          | (006)            | 2500           | -0-         | -0-         |                  | 4-5 Mos             |
|          | (007)            |                |             |             | Sales COD        | 6-12 Mos            |
| 01/95    | Ppt              | 250            | 100         | -0-         | N15              | 1 Mo                |
| 10/94    | (009)            | 100            | -0-         | -0-         |                  | 6-12 Mos            |

Cash account

\* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.

**FINANCE**

11/17/94 On NOV 17 1994 Hank Gibbs, spokesperson, deferred all information

----- INVESTIGATIVE PROCESS -----

As of Nov 17 1994, a search of Dun & Bradstreet's Public Record Database found no suits, liens, judgments or UCC's to which Dudley Labs at 1508 Wellington Ave, Tom's River, NJ was a named defendant or debtor. Public records received hereafter will be entered into the Database and will be included in reports which contain a Public Filings section.

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April 3, 1995  
3:01 pm

# **HISTORY**

11/17/94

**HENRY DUDLEY, OWNER**

Ownership information provided verbally by outside sources on JAN 17 1994.

Business started 1994 by Henry Dudley. Exact start date is undetermined, so 1994 is being used.

**HENRY DUDLEY** born 1943. 1964-1966 employed by A Arcolino Service Center, Lakewood, NJ as a mechanic. 1966-1968 employed by Barneys Service Center, Lakewood, NJ. 1968-1969 employed by Point Pleasant Honda, Point Pleasant, NJ. 1969-1970 employed by Coast Dodge, Asbury Park, NJ. 1970-present active with Hanks Cycle Shop Inc, Toms River, NJ.

# **OPERATION**

11/17/94

Undetermined.

Terms are net 30 days. Sells to commercial concerns.

Nonseasonal.

**EMPLOYEES:** 2 which includes owner.

**FACILITIES:** Operates from residence of Henry Dudley.

**LOCATION:** Residential section on side street.

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037 037

-- END OF REPORT --



## **Exhibit 2**

THE WHITE HOUSE

WASHINGTON

February 1, 1994

Dear Michael:

I have your letters of January 4 and January 11, 1994, concerning the December 2, 1993 letter from Lionel S. Johns, Associate Director for Technology of the Office of Science and Technology Policy (OSTP), to the Federal Communications Commission (FCC). As you know, Mr. Johns' letter addressed the Notice of Proposed Rulemaking (January 8, 1993, FCC Docket No. 92-297), on the allocation of spectrum in the 27.5-29.5 GHz band for Local Multipoint Distribution Services (LMDS).

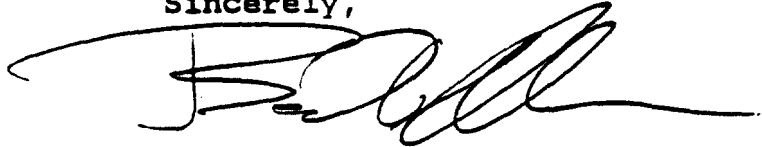
OSTP's December 2 submission to the FCC was made on the record. It has therefore been available for review by all interested parties. In addition, OSTP is an agency, separate from the White House Office, in the Executive Office of the President, and Mr. Johns -- the signatory of the letter -- holds no White House position. While your letters refer to prior instances in which senior White House officials sought to influence the FCC, those situations involved off-the-record oral communications. The OSTP submission of December 2 -- an on-the-record, written communication by an official outside of the White House -- is not comparable to those past situations.

The White House recognizes, and is committed to preserving, the independence of the FCC and other independent agencies. We believe that in this case, OSTP's on-the-record, written submission was an appropriate vehicle for providing that office's expert views to the FCC. We believe that submission neither undermines the independence of the FCC nor inhibits the Commissioners in any way from applying their independent judgment to the matter before them.

As your correspondence indicates, you have forwarded to OSTP your position concerning the substance of the Mr. Johns' December 2 submission. Your correspondence includes several proposals for OSTP to consider. I assume that you also have presented, or will present, your position to the FCC for its consideration.

Please do not hesitate to contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink, appearing to be "Bernard W. Nussbaum", written over a horizontal line.

Bernard W. Nussbaum  
Counsel to the President

Michael R. Gardner, Esq.  
1150 Connecticut Avenue, N.W.  
Suite 710  
Washington, D.C. 20036